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Attorneys for Plaintiff,
VACC, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VACC, INC., a California Corporation

Plaintiff,

vs.

JON BYRON DAVIS (aka J. Byron Davis),
an individual,

Defendant.

CASE NO.

**PLAINTIFF VACC, INC.'S COMPLAINT
FOR:**

- 1) CORRECTION OF
INVENTORSHIP AND
OWNERSHIP OF PATENT
APPLICATION;**
- 2) MISAPPROPRIATION OF TRADE
SECRETS IN VIOLATION OF CAL.
CODE CIV. PROC. § 3426;**
- 3) BREACH OF FIDUCIARY DUTY;**
- 4) COMPUTER FRAUD AND ABUSE
ACT, 18 U.S.C. § 1030;**
- 5) CALIFORNIA COMPREHENSIVE
DATA ACCESS AND FRAUD ACT,
CAL. PEN. CODE § 502;**
- 6) FALSE ADVERTISING IN
VIOLATION OF SECTION 43(A)
OF THE LANHAM ACT, 15 U.S.C. §**

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- 1125(A);
- 7) FALSE ADVERTISING AND
UNFAIR COMPETITION IN
VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200;
- 8) NEGLIGENT INTERFERENCE
WITH ECONOMIC RELATIONS;
AND
- 9) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, VACC, Inc., a California Corporation (“VACC”), complains of JON BYRON DAVIS (aka J. Byron Davis) (“Defendant”) as follows:

I. PARTIES

1. Plaintiff VACC, Inc., is now and at all times herein mentioned was a corporation organized and existing under the laws of the State of California with its principal place of business located at 490 Post Street, Suite 1427, San Francisco CA, 94102.

2. Defendant Jon Byron Davis, also known as J. Byron Davis, is now and at all times was an individual residing in San Francisco, California, and, upon information and belief, currently resides in San Francisco, California, at 1015 Florida Street, San Francisco, CA 94110, and works in San Francisco, California.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to several federal causes of action. This is an action for correction of inventorship and ownership of a patent application arising under the patent laws of the United States, 35 U.S.C. §256, with related counts. In addition, this Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338, as the Plaintiff’s Computer Fraud and Abuse Act claim and Plaintiff’s Lanham Act claim each separately arises under federal law, specifically, 18 U.S.C. § 1030, *et seq.*, and 15 U.S.C. § 1125, *et seq.*

4. This Court has supplemental subject matter jurisdiction over the pendent common law and state law claims under 28 U.S.C. § 1367 because these claims are so related to VACC’s claims under federal law that they form part of the same case or controversy and drive from a common nucleus of operative fact.

5. This Court has personal jurisdiction over Defendant because he resides in this judicial district, and because he has conducted and does conduct business within the State of California and this judicial district.

6. Venue this district is appropriate under 2 U.S.C. §§ 1391 and 1400 because the events giving rise to the dispute occurred in this district. Defendant has done business in this District and committed the acts alleged herein in this District, and continues to improperly hold Plaintiff’s property in this District, all of which entitle Plaintiff to relief.

III. INTRADISTRICT ASSIGNMENT

7. Assignment of this matter to the San Francisco Division is appropriate because San Francisco County is the county in which the action arises. A substantial part of the events or omissions which give rise to the claims below occurred in San Francisco and a substantial part of the property that is the subject of the action is situated in San Francisco. This action involves causes of action involving intellectual property, including a patent application and trade secrets.

IV. NATURE OF THE ACTION

8. VACC seeks injunctive relief for correction of inventorship and ownership with respect to a provisional patent application. VACC additionally seeks injunctive and monetary relief for acts of trade secret misappropriation, breach of fiduciary duty, false advertising, and unfair competition. VACC additionally seeks appropriate damages for acts of intentional and negligent interference with contract and prospective business relationships.

V. FACTUAL BACKGROUND**Plaintiff VACC**

9. VACC provides services in the noise and vibration control industry. Specifically, VACC provides a variety of services for the measurement, control and monitoring of vibration, noise and acoustics. For example, VACC provides interior and environmental vibration and noise control and acoustical designs for architectural designs, structural designs as well as product and tool designs. Moreover, VACC not only designs systems and structures for noise control and abatement but also tests and monitors them for performance using acoustical and micro-vibration analyses.

Defendant, Former Employee of VACC

10. From approximately January 1, 2000, to approximately August 11, 2015, Defendant was employed by VACC, as an associate and ultimately an executive officer of VACC and acted in the role of Vice President.

11. Defendant began competing directly against VACC immediately after leaving VACC.

12. During his employment with VACC, Defendant was tasked with, among other

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1 things, the design and development of vibration and noise monitoring systems.

2 13. In 2012, Defendant, as an employee of VACC was developing a monitoring
3 system which would take advantage of pre-existing technology in cellphones. Though such
4 activities were clearly within the scope of Defendant's employment with VACC he nonetheless
5 had intended to develop the product on his own to profit from the device, which was later to be
6 developed by VACC and its staff, commercialized by VACC, and used by VACC to support
7 VACC's existing clientele. Specifically, Defendant sought a royalty from VACC for coming up
8 with the monitoring device idea while relying on VACC to develop, market and commercialize
9 the monitoring device.

10 14. Defendant looked to VACC and its personnel to assist with the design and
11 creation of the cell phone monitoring system prototype and to pay for the development and
12 marketing of the product.

13 15. VACC, its personnel, and a third party hired by VACC developed the software
14 and hardware related to the cell phone monitoring system.

15 16. The cell phone monitoring system was intended to be used to service VACC's
16 existing clients.

17 17. Additionally, VACC has plans to license the technology to third parties.

18 18. Though the design, development, marketing and roll-out of the cell phone
19 monitoring system was to be headed up by VACC, the parties were in discussions as to the split
20 of proceeds from the license or sale of the cell phone monitoring system to incentive Defendant
21 to head up the development of the system and to do so in a timely fashion.

22 19. Immediately after Defendant's employment terminated in or around August 2015,
23 Defendant filed a provisional patent application titled "SENSOR DATA GATHERING,
24 THRESHOLD EXCEEDANCE DETERMINATION, AND ALERT GENERATION MOBILE
25 DEVICE COMMUNICATION SYSTEM," application number 62/216,250, on September 9,
26 2015. (the "CLAIMED INVENTION")

27 20. As described below in more detail, Defendant has falsely claimed sole
28 inventorship and ownership of the provisional patent application and CLAIMED INVENTION.

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21. Further, Defendant took other intellectual property from VACC, including confidential information and misappropriated trade secrets to VACC's detriment so that Defendant could directly compete against VACC in the same industry related to the same customers.

22. Defendant could not have competed against VACC in this industry as quickly as he was able to but-for his misappropriation of trade secrets and unauthorized access to VACC's files.

23. As described below in more detail, Defendant accessed information on computers without authorization or permission and used such information without authorization for fraudulent purposes and to compete with his former employer VACC.

24. Defendant stole customers from VACC, including OSHU, whom VACC had consulted with for several years on a new facility and also installed monitors in OSHU's existing facility.

25. As described below in more detail, Defendant hid the fact that Defendant had been working with OSHU on a new project for several months while employed by VACC, the Vollum project, which Defendant took with him after he left without informing VACC.

26. As described below in more detail, Defendant hid the fact that Defendant had been working with JDH Corrosion Consultants, which Defendant took with him after he left without informing VACC.

27. As described below in more detail, Defendant breached his fiduciary duties by competing directly against VACC, including while employed by VACC and acting in his role as Vice President.

FIRST CLAIM

(Correction of Inventorship and Ownership of Patent Application)

28. VACC realleges and incorporates by reference paragraphs 1-27 above as though fully set forth herein.

29. On information and belief, on September 9, 2015, Defendant filed for a provisional patent titled "SENSOR DATA GATHERING, THRESHOLD EXCEEDANCE

1 DETERMINATION, AND ALERT GENERATION MOBILE DEVICE COMMUNICATION
2 SYSTEM,” application number 62/216,250.

3 30. Said technology was developed between 2012 and August 2015 while Defendant
4 was an employee of VACC in the course and scope of his employment with VACC, using
5 VACC employees, funds and resources.

6 31. Defendant was not the actual or sole inventor of the invention identified in the
7 above provisional patent. Other employees of VACC were involved in the development of the
8 invention, including Ahmad Bayat and Tyler Rynberg, and a third-party was hired by VACC to
9 assist with development of the hardware and the software which is, upon information and belief,
10 the subject of the claimed invention.

11 32. Defendant was not the owner of the patent application. VACC is an owner based
12 on VACC’s employment of Defendant with respect to the very same industry that is the subject
13 of the invention.

14 33. Thus, upon information and belief, Defendant fraudulently identifies inventorship
15 and ownership on his provisional patent application, by stating that Defendant is the sole
16 inventor and by stating that Defendant is the owner of the invention, by excluding Plaintiff (and
17 other third parties) from representations to the USPTO regarding inventorship and ownership,
18 and any patent that issues from said application will be invalidated for fraud based on statements
19 made to the USPTO which intentionally conceal the identities of the inventor(s) and owner of the
20 invention.

21 34. Defendant’s fraudulent and misleading statements to the USPTO have denied
22 VACC the ability to rightfully (a) seek a patent on the technology identified by Defendant as the
23 “SENSOR DATA GATHERING, THRESHOLD EXCEEDANCE DETERMINATION, AND
24 ALERT GENERATION MOBILE DEVICE COMMUNICATION SYSTEM,” (b) benefit from
25 exclusively licensing that technology to third parties, (c) claim inventorship, (d) claim
26 ownership, (e) control the patent application prosecution strategy, and (f) represent that the
27 invention is patent-pending and/or otherwise profit and benefit from ownership both financially
28 and through marketing, promotions, and creating good will as an innovative company. Each of

these facts provides a basis for damages caused by Defendant and each expects to be ongoing and developing during the prosecution of the patent application(s).

35. At all times relevant, Defendant knew the inventor(s) and knew the owner; Defendant knew the representations to be false and fraudulent at the time they were made; and yet Defendant made those representations with the intent to defraud and deceive the USPTO, to induce the USPTO to issue a patent to Defendant as the sole inventor and owner, and to benefit.

36. Upon information and believe, Defendant has made statements to others (not at the USPTO) regarding claims of inventorship and/or ownership of the technology.

37. As a proximate result of Defendant's fraud, VACC has sustained general damages in an amount presently unascertained.

SECOND CLAIM

(Misappropriation of Trade Secrets in Violation of Cal. Code Civ. Proc. § 3426)

38. VACC realleges and incorporates by reference paragraphs 1-37 as though fully set forth herein.

39. Defendant, through improper means, misappropriated VACC's trade secrets and processes of VACC, including, but not limited to, proprietary source code, information regarding hardware and software, designs, bill of materials, customer lists, financial and pricing information, templates and other proprietary information including technical data and documentation that together comprise.

40. For example, several folders of documents and data that VACC considers proprietary include:

- (1) Testmonster: This folder contains all the proprietary hardware, bill of materials and other details and software source code referenced above relating to VACC's monitoring systems;
- (2) Design Tools: This folder includes calculations, software programs, templates, specifications, and tools VACC developed over fifteen years;
- (3) Projects: This folder has all of VACC's client projects and clients for the past fifteen years. Past projects are archived here and active projects are included here. Design and engineering work VACC has done on these projects are extremely valuable for VAAC in doing future work.

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(4) Templates - this folder contains VACC's report templates and spreadsheet templates for data processing. Since VACC takes vibration and noise measurements, VACC has developed different templates to process those types of data.

(5) Proposals – includes all past and present proposals for new projects. Details and the costing in these projects are proprietary to VACC and someone else can get an unfair advantage by knowing how VACC pricing works.

(6) Marketing – this folder contains all marketing materials developed by VACC. The defendant can use these material to develop his own marketing materials.

41. The data and information, including those listed above, are company assets that give VACC an edge over its competitors. A person or company beginning in the vibration and acoustic consulting business would require months (if not years) to develop these documents and templates which are powerful efficiency tools in processing data.

42. VACC's trade secrets have economic value, for example, in that they provide VACC a competitive advantage in preparing and making bid proposals for various contracts. These contracts are highly competitive and the trade secrets and processes made mention of above would impact the final bid price, which could be the determinative factor in selecting the winning bid and awarding the contract.

43. VACC's trade secrets, including those listed above, are not generally known to the public or to others, from which VACC derives independent economic value.

44. VACC has engaged and continues to engage in efforts to maintain the secrecy of its trade secrets, including, but not limited to, to heightened security measures, limiting access to VACC's trade secrets within the organization and through the use of password protection and other similar security measures, and requiring third parties sign confidentiality and non-disclosure agreements.

45. VACC is informed and believes and thereon alleges that after Defendant's employment with VACC ended, Defendant misappropriated the above listed trade secrets by making and keeping copies of VACC's files and is currently using this information to unfairly compete with VACC.

46. Defendant knew or should have known that this information was acquired from

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VACC and should have maintained its secrecy.

47. On information and belief, Defendant's wrongful conduct has caused great and irreparable injury to VACC's business in that, for example, VACC has lost several profitable contracts due to the theft and misappropriation of its trade secrets and processes.

48. As a proximate result of Defendant's misappropriation of VACC's trade secrets, VACC has sustained general damages in an amount presently unascertained.

49. As a further proximate result of Defendant's misappropriation of VACC's trade secrets, VACC has sustained incidental and consequential damages, including damage to its reputation, lost business opportunities, and otherwise to perform and compete for other contracts in an amount presently unascertained.

50. VACC has suffered and continues to suffer an irreparable injury by Defendant's wrongful acts of theft of trade secrets, and no remedy available at law would be sufficient to compensate it for that injury.

51. Considering the balance of the hardships between VACC and Defendant, an injunction is warranted and the public interest would not be disserved by the issuance of an injunction.

52. VACC is entitled to a preliminary and permanent injunction restraining Defendant, and all persons or entities acting in concert with Defendant, from engaging in further acts constituting misappropriation of trade secrets.

53. VACC is additionally entitled to actual damages for injuries sustained as a result of Defendant's wrongful actions in misappropriation and misuse of VACC's trade secrets.

54. As a further proximate result of Defendant's wrongful conduct, Defendant has been and will be unjustly enriched in an amount to be proven at trial.

55. In the event that neither VACC's actual damages nor Defendants unjust enrichment are provable, VACC is entitled to a reasonable royalty for using its trade secrets, as provided by Cal. Code Civ. Proc. § 3426.3(b).

56. Defendant's misappropriation of VACC's trade secrets was and is willful and malicious. VACC is therefore entitled to exemplary or punitive damages pursuant to Cal. Code

1 Civ. Proc. § 3426.3. VACC is further entitled to recover attorneys' fees and costs pursuant to
 2 Cal. Code Civ. Proc. § 3426.4.

3 **THIRD CLAIM**

4 **(Breach of Fiduciary Duty)**

5 57. Plaintiff realleges and incororporates by reference paragraphs 1-56 as though
 6 fully set forth herein.

7 58. During his employment, including in his role as Vice President, Defendant was
 8 paid a salary and bonus and performed various supervisory and managerial duties, including but
 9 not limited to, managing the staff at VACC, increasing the staff's productivity and supervising
 10 and overseeing development of products including in-part the product that was later the subject
 11 of the CLAIMED INVENTION.

12 59. As an employee and as an officer of VACC, Defendant was entrusted with
 13 maintaining various VACC proprietary and confidential information and not disclosing the
 14 information or using it for his own personal and/or financial gain, including VACC's trade
 15 secrets, among other things.

16 60. Defendant owed VACC a fiduciary duty to uphold VACC's interests and to
 17 faithfully perform his duties as the Vice President of VACC.

18 61. Defendant was obligated and entrusted to use such information only in the
 19 performance of his duties as an employee and officer of VACC, to hold such information in
 20 confidence and trust, and to use all reasonable precautions to assure that such information was
 21 not disclosed to unauthorized persons or used in an unauthorized manner, both during and after
 22 his employment at VACC.

23 62. The trust and confidence that VACC placed in Defendant gave rise to a fiduciary
 24 duty not to disclose VACC's proprietary and confidential information or use it for personal gain,
 25 including the VACC confidential information.

26 63. On information and belief, in acting as Vice President of VACC, Defendant did
 27 not exercise the care required of him in that he failed to, among other things, avoid conflicts of
 28 interest and competed against VACC and/or prepared to compete against VACC while still in the

1 employment of VACC.

2 64. On information and belief, Defendant engaged in and/or prepared to engage in
3 self-interested transactions while he was still employed by VACC and while acting as a fiduciary
4 for VACC. Among other things, Defendant appeared to divest from VACC a corporate
5 opportunity work on and/or continue to work on the Vollum Project at the Oregon Health
6 Sciences University ("OHSU") in Portland, OR. This project involved the renovation of the
7 Vollum building on the OHSU campus.

8 65. Contrary to his duty of loyalty to fully disclose the facts of the Vollum project
9 prior to taking said corporate opportunity away from VACC, Defendant never disclosed or
10 discussed the project with anyone at VACC and did not log the project as he should have in the
11 corporate Projects file like he should have. Instead, and while still working as an employee of
12 VACC, Defendant apparently did the job on the side with the intention to take that contract
13 (which should have gone to or stayed with VACC) when he left employment with VACC.

14 66. Defendant had been in discussions with OHSU regarding the Vollum project for
15 months prior to leaving VACC, including email correspondence from at least as early as January
16 2015 through August 2015.

17 67. However, it was not until after his departure from VACC that VACC first learned
18 of this project and Defendant's conspiracy to conceal this project from VACC in order to deny
19 VACC of the benefits of this project and continued benefits of advising OHSU and its architects
20 regarding the Vollum project.

21 68. Today, Defendant's resume lists the Vollum project as one of his projects, as well
22 as other projects, and Defendant's new employer lists this information on its webpage.

23 69. Upon information and belief, Defendant lists as its projects certain projects that
24 were either (1) projects performed while Defendant was working at VACC, (2) projects that
25 Defendant worked on both before and after working at VACC, (3) projects that Defendant took
26 from VACC when Defendant left his employment with VACC, or (4) projects where Defendant
27 bid in direct competition with VACC.

28 70. The aforementioned acts of Defendant were performed in direct contravention of,

1 and with an utter disregard for, the fiduciary duty he owed to VACC.

2 71. With respect to VACC's Vollum project, VACC's business relations with OHSU
3 and the architectural firm tasked with the Vollum project (Orangewall Studios architecture and
4 planning ("Orangewall")) has been damaged as a result of Defendant's breach of fiduciary duty.

5 72. With respect to VACC's project with JDH Corrosion Consultants related to a
6 project titled 3rd Street Light Pole Vibration Study (hereinafter referred to as the "3rd Street
7 Project"), VACC entered into an agreement while Defendant was employed by VACC.

8 73. VACC, including Defendant and at least one other VACC employee, had at least
9 one meeting with the client related to the 3rd Street Project.

10 74. On August 26, 2015, approximately two weeks after Defendant left his
11 employment at VACC on August 11, 2015, a representative of JDH Corrosion Consultants
12 contacted VACC to terminate the agreement.

13 75. Upon information and belief, and based on Defendant's advertising, it appears
14 that Defendant continued working on this project after Defendant left his employment with
15 VACC.

16 76. As a proximate result of Defendant's breach of his fiduciary duty, Defendant has
17 profited and VACC has sustained general damages in an amount presently unascertained.

18 77. As a further proximate result of Defendant's breach of his fiduciary duties, VACC
19 has sustained incidental and consequential damages, including damages to its reputation, lost
20 business opportunities to transact business with JDH Corrosion Consultants, Orangewall, and
21 OHSU, and otherwise to perform and compete for other contracts in an amount presently
22 unascertained.

23 **FOURTH CLAIM**

24 **(Computer Fraud and Abuse Act, 18 U.S.C. § 1030)**

25 78. VACC repeats and re-alleges the allegations contained in paragraphs 1- 77 as
26 though fully set forth herein.

27 79. VACC's computer equipment, including the laptop computer issued to Defendant
28 at the time he was hired by VACC, can connect to the Internet and was used in interstate

1 commerce. Accordingly, such computers are “protected computers” within the meaning of the
2 Computer Fraud and Abuse Act.

3 80. Upon information and belief, beginning in or around January 2015 and continuing
4 after August 2015. Thus, as of that time, Defendant either intentionally accessed a computer
5 without access or intentionally exceeded authorized access to VACC’s computer network,
6 systems, including for example the six proprietary folders referenced above, and the laptop
7 computer issued to Defendant.

8 81. As described previously, Defendant breached his fiduciary duty to VACC by
9 divesting VACC of corporate opportunity and/or continued opportunity related to the Vollum
10 project at OHSU.

11 82. Upon information and belief, Defendant knew he was accessing information
12 which he was not authorized to access.

13 83. On information and belief, without authorization, Defendant repeatedly and
14 routinely accessed protected computers owned by VACC following breach of his fiduciary duty
15 to VACC. On information and belief, during his unauthorized access, Defendant copied and
16 misappropriated electronic data, including but not limited to VACC trade secrets and processes.

17 84. As a result of Defendant’s actions, VACC has sustained general damages in an
18 amount presently unascertained.

19 85. VACC has also sustained incidental and consequential damages, including
20 damage to its reputation, lost business opportunities to transact business with JDH Corrosion
21 Consultants , Orangewall, and OHSU, and otherwise to perform and compete for other contracts
22 in an amount presently unascertained.

23 **FIFTH CLAIM**

24 **(California Comprehensive Data Access and Fraud Act, Cal. Pen. Code § 502)**

25 86. VACC realleges and incorporates by reference paragraphs 1-85 as though fully
26 set forth herein.

27 87. Defendant violated California Comprehensive Computer Data Access and Fraud
28 Act, Cal. Pen. Code § 502(c)(1)(A) by knowingly accessing and without permission using

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1 Plaintiff's computers, computer systems, peripherals, computer networks, and/or data stored
2 therein to devise and execute a scheme or artifice to defraud, deceive and/or extort. As stated
3 above, Defendant breached his fiduciary duty to VACC, and Defendant knowingly accessed data
4 and without permission used the data.

5 88. Defendant used and accessed computers, computer systems, computer networks,
6 and/or data stored therein without permission in violation of California Comprehensive
7 Computer Data Access and Fraud Act, Cal. Pen. Code § 502 et seq. for the purpose of bypassing
8 the time, effort, and expense required for defendants to develop, market, distribute, and sell its
9 own services and/or goods.

10 89. Upon information and belief, Defendant's knowing access was at a time when
11 Defendant lacked authorization to access, copy, alter, make or use any data from a computer,
12 computer system, or computer network owned or operated by VACC because Defendant did not
13 work at VACC at that time or had already determined he was leaving VACC to begin a
14 competing company.

15 90. Alternatively, if Defendant's knowing access was at a time when Defendant had
16 authorization or permission generally to access data from a computer, computer system, or
17 computer network owned or operated by VACC for the benefit of VACC because Defendant was
18 at that time an employee of Plaintiff, then Defendant's authorization or permission was exceeded
19 by the manner in which Defendant accessed, copied, altered, made, and/or used the data from the
20 computer, computer system, or computer network owned or operated by VACC. Defendant did
21 not have permission to use the data to directly compete against VACC and/or steal VACC's
22 customers or related data.

23 91. Moreover, following breach of his fiduciary duty defendant was prohibited from
24 taking or copying any supporting documentation, whether existing or residing internal or
25 external to a computer, computer system, or computer network owned or operated by VACC.

26 92. On information and belief, without authorization, Defendant repeatedly and
27 routinely accessed protected computers owned by VACC. On information and belief, during his
28 unauthorized access, Defendant copied and misappropriated electronic data, including but not

1 limited to VACC trade secrets and processes including documents stored in the four folders
2 referenced above.

3 93. Upon information and belief, Defendant knew he was accessing information
4 which he was not authorized or permitted to access and was using the data for improper
5 purposes.

6 94. As a result of Defendant's actions, VACC has sustained general damages in an
7 amount presently unascertained.

8 95. VACC has also sustained incidental and consequential damages, including
9 damage to its reputation, lost business opportunities to transact business with JDH Corrosion
10 Consultants, Orangewall, and OHSU, and otherwise to perform and compete for other contracts
11 in an amount presently unascertained.

12 **SIXTH CLAIM**

13 **(False Advertising in Violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a))**

14 96. VACC realleges and incorporates by reference paragraphs 1-95 above as though
15 fully set forth herein.

16 97. In addition to Defendant's false and fraudulent statements related to inventorship
17 and ownership, Defendant makes further representations that are misleading and likely to cause
18 consumer confusion as to affiliation, sponsorship, and source of Defendant's goods and services,
19 related to Defendant's competing vibration consulting services. For example, Defendant
20 describes Plaintiff's projects, including on the website run by Defendant's new company,
21 Defendant has made false or misleading representations regarding ownership and inventorship of
22 the invention, which relates to goods and/or services which constitutes a false designation of
23 origin, false or misleading description of fact, or false or misleading representation of fact, which
24 is likely to mislead customers and the public as to the inventor and owner of the invention, and to
25 Plaintiff's detriment.

26 98. These false statements regarding Plaintiff's ownership and inventorship are likely
27 to cause confusion, or to cause mistake, or to deceive consumers with respect the correct owner
28 and inventor(s) of the invention. These false statements will also confuse consumers as to the

1 affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship,
2 or approval of Defendant's goods, services, or commercial activities by Plaintiff.

3 99. Defendant is selling, advertising, and promotion its services and products in
4 interstate commerce.

5 100. By virtue of the conduct described above, Defendant has made false and
6 misleading statements and misrepresentations of fact in commerce in communications with
7 customers and potential customers, including on the website of Defendant's new company.

8 101. Defendant's statements as described above, have a tendency to deceive and have
9 deceived VACC's and Defendant's customers and potential customers.

10 102. Defendant's statements are material and, upon information and belief, have
11 affected customers' decisions about whether to purchase Defendant's systems or services.

12 103. Defendant's activities set forth above constitute a violation of Section 43(a) of the
13 Lanham Act, 15 U.S.C. § 1125(a).

14 104. On information and belief, Defendant acted willfully, intentionally, and in bad
15 faith.

16 105. VACC has suffered and continues to suffer an irreparable injury by Defendant's
17 wrongful acts of false advertising including a loss of goodwill, and no remedy available at law
18 would be sufficient to compensate VACC for that injury.

19 106. Considering the balance of the hardships between VACC and Defendant, an
20 injunction is warranted and the public interest would not be disserved by the issuance of an
21 injunction.

22 107. As such, VACC is entitled to a preliminary and permanent injunction restraining
23 Defendant, and all persons or entities acting in concert with Defendant, from engaging in further
24 acts constituting false advertising in violation of the Lanham Act.

25 108. VACC is additionally entitled to actual damages in an amount to be proven at trial
26 for injuries sustained as a result of Defendant's violations of Section 43(a) of the Lanham Act,
27 15 U.S.C. § 1125(a), recovery of Defendant's profits obtained through its wrongful actions, as
28 well as recovery of attorneys' fees and costs of this action.

109. Defendant should additionally be required to issue corrective advertising to repair the damage it has done to VACC with its customers and in the marketplace.

110. Defendant should also be required to correct the inventorship and ownership of the provisional patent application to avoid further damage to VACC with its customers and in the marketplace.

SEVENTH CLAIM

(False Advertising and Unfair Competition

in Violation of California Business and Professions Code § 17200)

111. VACC realleges and incorporates by reference paragraphs 1-110 as though fully set forth herein.

112. Defendant has committed acts of unfair competition as defined by California Business and Professions Code § 17200, et seq., by engaging in at least the following unlawful practices:

- (1) Misappropriation and disclosure of confidential and proprietary VACC information to compete against VACC;
- (2) Tortious interference with VACC's economic relations with respect to – at least – the Vollum contract with OHSU and Orangewall and the 3rd Street Project agreement with JDH Corrosion Consultants;
- (3) Tortious interference with VACC's prospective economic relations with – at least – JDH Corrosion Consultants, OHSU, and Orangewall;
- (4) Violations of the Computer Fraud and Abuse Act;
- (5) Violations of the California Comprehensive Data Access and Fraud Act;
- (6) Fraud in the attempt to procure a United States Patent through fraudulent statements related to ownership and authorship; and
- (7) Representations to consumers and the public that misrepresent the truth as to the ownership and inventorship of the CLAIMED INVENTION.

113. These acts and practices, as described above, violate California Business and Professions Code § 17200 in that they constitute unlawful business practices or acts prohibited

1 thereunder.

2 114. The unlawful, unfair and fraudulent business practices of Defendants as described
3 above have damaged VACC's reputation, caused it to lose valuable contracts, and/or be unable
4 to fairly compete with Defendant or his new business.

5 115. As a direct and proximate cause of the aforementioned acts, the Vollum contract
6 was not extended and Defendant has improperly obtained the benefits of that contract through his
7 unfair competition.

8 116. As a direct and proximate cause of the aforementioned acts, the JDH Corrosion
9 Consultants contract was terminated and Defendant has improperly obtained the benefits of that
10 contract through his unfair competition.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Negligent Interference with Economic Relations)**

13 117. VACC realleges and incorporates by reference paragraphs 1-116 as though fully
14 set forth herein.

15 118. As a fiduciary to VACC Defendant owed VACC a duty of care and a duty of
16 loyalty.

17 119. Despite this duty of care and loyalty Defendant engaged in reckless conduct to the
18 detriment of VACC.

19 120. Specifically, Defendant was aware, of the Vollum project having worked on that
20 project while still in the employ of VACC.

21 121. On information and belief, Defendant worked on the Vollum project, at least in
22 part, as an employee of VACC and was aware of the economic relationship between VACC and
23 with Orangewall and OHSU.

24 122. Specifically, Defendant was aware, of the 3rd Street Project having worked on that
25 project while still in the employ of VACC.

26 123. On information and belief, Defendant worked on the 3rd Street project, at least in
27 part, as an employee of VACC and was aware of the economic relationship between VACC and
28 with JDH Corrosion Consultants.

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1 124. Having knowledge of this relationship as well as the breadth and the scope of the
2 Vollum project and 3rd Street Project Defendant had a reason to know that VACC would likely
3 reap a future economic benefit by further assisting on the Vollum project and 3rd Street Project,
4 respectively.

5 125. In accordance with its duty as a fiduciary to VACC Defendant was prohibited
6 from engaging in conduct that would interfere with ? VACC to lose the probable future
7 economic benefit or advantage arising from its relationship with JDH Corrosion Consultants,
8 Orangewall, and OHSU.

9 126. Defendant did not act with due care on behalf of VACC with respect to the
10 Vollum project and 3rd Street Project and failed to take reasonable steps which would allow
11 VACC to continue the economic relationship with JDH Corrosion Consultants, Orangewall, and
12 OHSU following his departure. Among other things, Defendant did not divulge to VACC the
13 specifics, details or general information about the Vollum project or 3rd Street Project because he
14 intended to poach at least those two projects from VACC on his departure.

15 127. Such actions by Defendant were done with reckless disregard for the economic
16 and commercial well-being of VACC and its economic relationship with JDH Corrosion
17 Consultants, Orangewall, and OHSU.

18 128. Defendant's wrongful conduct and negligent interference caused Orangewall and
19 OHSU to remove the project from VACC and award the Vollum project to another firm.

20 129. Defendant's wrongful conduct and negligent interference caused JDH Corrosion
21 Consultants to remove the project from VACC and award the 3rd Street Project to another firm

22 130. On information and belief, Defendant improperly used VACC's proprietary and
23 confidential information to solicit the Vollum Project and 3rd Street Project and to improperly
24 prepare bid proposals for that project for his own benefit in competition with VACC.

25 131. VACC is informed and believes and thereon alleges that but for Defendant's
26 negligence and wrongful interference with VACC's rights under the Vollum contract and 3rd
27 Street Project, VACC would have continued to provide consultation services under the contract
28 to JDH Corrosion Consultants, Orangewall, and OHSU.

1 140. Defendant's wrongful conduct and intentional interference with VACC's
2 economic relationship with Orangewall and OHSU caused Orangewall and OHSU to remove the
3 project from VACC and award the Vollum project to another firm. On information and belief,
4 that firm is Defendant's new firm.

5 141. Defendant's wrongful conduct and intentional interference with VACC's
6 economic relationship with JDH Corrosion Consultants caused JDH Corrosion Consultants to
7 terminate its agreement with VACC and award the 3rd Street Project to another firm. On
8 information and belied, that firm is Defendant's new firm.

9 142. On information and belief, Defendant improperly used VACC's proprietary and
10 confidential information to solicit the Vollum Project and 3rd Street Project and to improperly
11 prepare bid proposals for those projects for his own benefit in competition with VACC.

12 143. VACC is informed and believes and thereon alleges that but for Defendant's
13 intentional interference with VACC's right under the Vollum contract, VACC would continue to
14 provide consultation services under the contract to Orangewall and OHSU.

15 144. VACC is informed and believes and thereon alleges that but for Defendant's
16 intentional interference with VACC's right under the 3rd Street Project agreement, VACC would
17 continue to provide consultation services under the agreement with JDH Corrosion Consultants.

18 145. As a proximate result of the intentional interference by Defendant, VACC has
19 sustained general damages in an amount presently unascertained.

20 146. As a further proximate result of the intentional interference by Defendant, VACC
21 has sustained incidental and consequential damages, including damage to its reputation, lost
22 business opportunities to transact business with JDH Corrosion Consultants, Orangewall, and
23 OHSU, and otherwise to perform and compete for other contracts in an amount presently
24 unascertained.

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PRAYER

WHEREFORE, VACC prays for judgment against Defendant as follows:

(a) A judgment that VACC's employee(s) and appropriate third parties, if any, are an inventor or co-inventor of the provisional patent application and an order under 35 U.S.C. §256 ordering correction of the provisional patent application to add VACC's employee(s) as an inventor;

(b) An order directing Defendant to take appropriate action to change the inventorship designation and add VACC's employee(s) and appropriate third parties, if any, as an inventor on the provisional application and any applications and patents issuing therefrom;

(c) A judgment finding that VACC has full ownership interest in the provisional patent application and an order assigning the provisional patent application to VACC;

(d) A judgment that VACC has an undivided ownership interest in the provisional patent application and any other patents or patent applications claiming priority to the provisional application;

(e) A judgment that Defendant has been unjustly enriched at VACC's expense and an award to VACC of an amount equal to the Defendant's unjust enrichment;

(f) A judgment that Defendant slandered the title of the CLAIMED INVENTION by failing to identify the true and correct inventors and owner of the CLAIMED INVENTION and an award to VACC of damages to include the diminution of value and impairment of salability of the CLAIMED INVENTION;

(g) An award to VACC of damages to include attorneys' fees and costs to recover title to the CLAIMED INVENTION, as well as the diminution of value of the CLAIMED INVENTION;

(h) A preliminary and thereafter a permanent injunction restraining and enjoining Defendant and all those in privity, concert or participation with Defendant from

Misappropriating or otherwise improperly using VACC's trade secrets;

Engaging in false advertising as prohibited by § 43(a) of the Lanham Act;

Engaging in false advertising or unfair business practices as prohibited by Cal.

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- 1 Bus. and Prof. Code § 17200, et seq.
- 2 (i) An order requiring Defendant, and all those in privity, concert, or participation
- 3 with Defendant to deliver up trade secret information current in its, his, or her possession;
- 4 (j) An award to VACC of actual, compensatory, punitive and exemplary damages;
- 5 (k) A judgment and order requiring Defendants, jointly and severally, to pay VACC's
- 6 pre-judgment and post-judgment interest on the full amounts of the damages awarded;
- 7 (l) A judgment that Defendant held VACC's property in a constructive trust;
- 8 (m) A judgment requiring Defendant to pay the costs of this action (including all
- 9 disbursements) and attorneys' fees as provided by 35 U.S.C. §285, with prejudgment interest;
- 10 (n) Award VACC its costs, including attorneys' fees, pursuant to the Lanham Act,
- 11 California Uniform Trade Secrets Act and as otherwise permitted by law.
- 12 (o) Such other and further relief as this Court may deem just and equitable.
- 13
- 14

15 Dated: March 18, 2016

GORDON REES SCULLY MANSUKHANI, LLP

16
17 By: /s/ Mark S. Posard
18 Mark S. Posard
19 Susan B. Meyer
20 Michael D. Kanach
21 Attorneys for Plaintiff,
22 VACC, INC.
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28

DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure Rule 28 and Civil Local Rule 3-6,
Plaintiff hereby demands that all issues so triable be determined by a jury.

Dated: March 18, 2016

GORDON REES SCULLY MANSUKHANI, LLP

By: /s/ Mark S. Posard
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Susan B. Meyer
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VACC, INC.

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